THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 20th September, 2006

W.P.No.11961 of 2004

Between:

R.Hanumantha Gowd … Petitioner

and

The District Collector,
Anantapur, Anantapur
District & others … Respondents

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ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 1st respondent in reviewing the Orders of the 3rd respondent vide Proceedings No.D.Dis.K4/Pkd/8861-A/99, dated 31-8-2003 as arbitrary and illegal and consequently to set aside the same and continue the petitioner as fair price shop dealer of V.Agraharam village, Amarapuram Mandal, Anantapur District.

It is the case of the petitioner that on certain flimsy grounds his authorization against the said fair price shop was cancelled by the 3rd respondent - Revenue Divisional Officer, Penukonda by his Proceedings No.D.Dis.282/97/C, dated 26-8-1998. Aggrieved by the same, he carried the matter in appeal before the 2nd respondent-Joint Collector. Respondent No.2, on perusing the Order passed by the 3rd respondent and the records available before him, allowed the appeal by an Order dated 11-5-1999 noticing as under:

> "The charge is not specific. The Revenue Divisional Officer did not mention in which month the dealer distributed 16 Kgs instead of 20 Kgs to the cardholders. The another charge i.e. selling of E.Cs. at higher rates, the inspection authority recorded statement and obtained some signatures in the village without card Nos. But it is not correct. As and when the statement recorded, the card Numbers must be obtained in the statement. This shows doubt that some particular persons, who are enemies to the dealer might have obtained. It is also noticed that the Mandal Revenue Officer has not recorded any statement in the village with regard to respect of the persons. The Mandal Revenue Officer simply

> mentioned that the dealer is not distributing the E.Cs to the cardholders properly and requested to initiate necessary disciplinary action against the dealer. This shows due to some pressure the report might have been prepared and submitted to the Revenue Divisional Officer."

and remanded the matter for reconsideration to the 3rd respondent-Revenue Divisional Officer. In pursuance of the same, the 3rd respondent reconsidered and passed Orders on 28-10-1999 taking a lenient view of the matter and imposing a fine of Rs.500/- and warning the petitioner to be careful in future. Aggrieved by this Order, it seems, one B. Suresh and 37 others of V.Agraharam village, Amarapuram Mandal of Anantapur District filed a review before the 1st respondent-District Collector directly. They have raised several grounds in support of their case. The allegations made therein, admittedly, did not form part of the original enquiry contemplated against the petitioner or before the 2nd respondent-Joint Collector when the appeal was being considered. However, the 1st respondent on the basis of some irrelevant report and complaints made by the villagers, which were never enquired into and which were never put to the petitioner nor any explanation was called for from him, allowed the appeal by setting aside the Orders of the 3rd respondent-Revenue Divisional Officer. Challenging the same, the present Writ Petition is filed. Learned counsel for the petitioner strenuously contended that the 1st respondent has no power to review the Orders passed by the 3rd respondent-Revenue Divisional Officer as a quasi-judicial authority, under the Control Orders. Further, no material, which was either relied upon or made available before the 3rd respondent-Revenue Divisional Officer while passing the original order of cancellation, which was the subject matter of appeal before the 2nd respondent were looked into or

had come up for consideration before the 1st respondent, in this regard. Respondent No.1 by taking review on his own without there being any power vested in him, on different considerations, which were never subject matter of any enquiry before the appropriate authority, allowed the appeal.

Learned Government Pleader appearing for the respondents supported the impugned Order passed by the 1st respondent and submitted that the 1st respondent being the head of the District, it is always open for him to make review of any Order passed by his subordinates and such a power is always available to him.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the impugned Orders and other material made available on record.

At the outset, I am of the opinion that the 1st respondent, as a quasi-judicial authority, is not vested with any power of review against the Order passed by the 3rd respondent-Revenue Divisional Officer. In fact, against the orders passed by the 3rd respondent, an appeal is available to the 2nd respondent-Joint Collector. The villagers/cardholders without availing such remedy, directly approached the 1st respondent-District Collector, who entertained the review and allowed it. Assuming that under the general power vested in the District Collector, he had taken up the review, but the reasons furnished and the facts that had come up for his consideration were never subject matter or original show cause notice issued to the petitioner. Under those circumstances, it must be deemed that the 1st respondent, purporting to exercise his review powers, passed the Orders without looking into the records and without there being any

relevance to the matter before him.

In the result, the impugned Order dated 31-8-2003 passed by the 1st respondent is set aside and the Order passed by the 3rd respondent on 28-10-1999 is restored. Respondents are directed to restore the authorization of the petitioner forthwith.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

20-9-2006

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